



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF: )  
 )  
Newmont USA Limited )  
and )  
Donner Mine Camp, Inc., ) U.S. EPA Docket No. 9-2006-23  
 ) UNILATERAL ADMINISTRATIVE  
 ) ORDER FOR THE PERFORMANCE  
 ) OF A REMOVAL ACTION  
Proceeding Under Section 106(a) )  
of the Comprehensive Environmental )  
Response, Compensation, and )  
Liability Act of 1980, )  
42 U.S.C. § 9606(a). )  
\_\_\_\_\_ )

This Order pertains to property located at the Zeibright Mine Site, 12707 Zeibright Road, Blue Canyon, Nevada County, California ("Property"). The Property consists of the area in and around what is known as the "Assay Building." This Order requires Respondents to conduct Removal Actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Property.

**I. AUTHORITY**

1. This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("CERCLA"). The

President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 ("Branch Chief"), by delegations dated September 29, 1997, and November 16, 2001.

## **II. PARTIES BOUND**

2. This Order shall apply to and be binding on the following entities (collectively referred to as "Respondents"): Newmont USA Limited; and Donner Mine Camp, Inc. ("Donner Mine Camp") a non-profit organization. Respondents are jointly and severally responsible for carrying out all activities required by this Order. This Order shall be binding on Respondents and any agents, officers, employees, successors and assigns. No change in ownership or operational status will alter a Respondent's obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondents are responsible for compliance with this Order and for ensuring that their employees, contractors, and agents comply with this Order. Respondents shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by them to perform the work required by this Order within three (3) days after the Effective Date of this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

3. No change in ownership or operational status will alter a Respondent's obligations under this Order.

4. Notwithstanding the terms of any contract or agreement, Respondents are responsible for compliance with this Order and for ensuring that all employees, contractors, and agents comply with this Order. Respondents shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by them to perform the work required by this Order within three (3) working days after the Effective Date of this Order or within three (3) working days of retaining their services, whichever is later.

5. Respondents may not convey any title, easement, or other interest that they may have in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. If Respondent, Donner Mine Camp wishes to transfer any title, easement, or other interest that they may have in any property comprising the Site, Respondent shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. In such case, Respondent Donner Mine Camp shall advise EPA no less than thirty (30) days prior to any anticipated transfer of interest.

### **III. DEFINITIONS**

6. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"Days" shall mean consecutive calendar days unless expressly stated otherwise.

"Working days" shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

"Property" shall mean the area in and around what is known as the "Assay Building" located at the Zeibright Mine Site, 12707 Zeibright Road, Blue Canyon, Nevada County, California.

"Removal Action Memorandum" or "Action Memorandum" shall mean the EPA Region 9 Superfund decision document, dated June 14, 2006 and signed by Daniel A. Meer, which selected CERCLA response actions for soil excavations and interior dust removal at the Property. The Removal Action Memorandum is included in this Order as Appendix A.

"Response Action" or "Removal Action") shall be those specific work items Respondents are required to perform at the Site pursuant to this Order, as set forth in Section IX of this Order.

"Section" shall mean a portion of this Order identified by a Roman numeral, unless otherwise stated.

"Site" shall mean the Zeibright Mine, located at 12707 Zeibright Road, Blue Canyon, Nevada County, California, in addition to any associated personal property, such as motor vehicles, trailers, containers, and other real property at which hazardous substances exist from the operation of the facility.

"State" shall mean the state of California, and all of its political subdivisions, including the Department of Toxic Substances Control ("DTSC").

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 9-2006-23, and any exhibits attached hereto. In the event of a conflict between this Order and any exhibit, this Order shall control.

"United States" shall mean the United States of America.

#### **IV. FINDINGS OF FACT**

##### **7. Site description**

The Site is an abandoned gold mine located in the foothills of the Sierra Nevada mountains approximately 2.5 miles northeast of Blue Canyon, Nevada County, California. The Zeibright Mine Site occupies approximately 100 acres of land. Approximately 17 acres of the Zeibright Mine Site, where the Property is located, is owned by Donner Mine Camp, Inc. a non-profit entity that operates a recreational camping facility for non-profit youth groups at the mine Site.

Soils containing elevated levels of lead, arsenic and iron in excess of EPA Region IX Preliminary Remediation Goals ("PRG") were found on the Property, located on the Donner Mine Camp portion of the Site. Dust sampled in the Assay Building was found to be in excess of

California Department of Health Services hazard level for lead in dust.

The Assay Building and the area surrounding the Assay Building are used as part of the Donner Mine Camp facilities. The Assay Building has been used as a mining museum accessible by both adults and children attending the camp. In addition, children may be exposed to soils surrounding the Assay Building.

#### 8. Site ownership and operation

Donner Mine Camp, Inc. is the current owner of the Property and surrounding area. Empire Star Mines Co. was a previous owner and operator of the Property, including the nearby Zeibright mine. In 1957, Empire Star Mines Co. was merged into Newmont Mining Corporation. Subsequently, through a series of mergers, corporate reorganizations and name changes, Newmont USA Limited assumed the liabilities of Newmont Mining Corporation.

#### 9. Release Characteristics

Based on EPA's observations during two Site inspections on June 1-2, 2004 and on August 17-18, 2005, soils contaminated with lead, iron and arsenic were found around the Assay Building. The contaminated soils are on a slope and are being carried downhill from the Assay Building via erosion of the soils by surface water runoff. The soils are very fine-grained and, when dry, pose a risk of human exposure through inhalation and ingestion. Dust and fine grained waste material contaminated by lead and arsenic inside the Assay Building pose a risk due to ingestion, dermal exposure, or inhalation, especially to children touring the museum. More specific detail of materials at the Site and release conditions is stated in the Memorandum *Request for a Time-Critical Removal Action at the Zeibright Mine Site in Nevada County, California* (the "Action Memorandum"), included with this Order as Appendix A.

EPA has determined that ingestion of lead may cause organ damage and result in

weakness and neurological impairment.

EPA has determined that arsenic is a probable human carcinogen. Inhalation of arsenic can cause throat and lung irritation. Ingestion of arsenic may cause nausea, vomiting, decreased red and white blood cells, abnormal heart rhythm, damage to blood vessels and death. Prolonged exposure may lead to peripheral neuropathy, hyper-pigmentation of the skin, and increased risk of several types of cancer.

Threats to public health or the environment stem from the significant potential for inhalation and ingestion of arsenic and lead from soil and dust both inside and in the outside the area surrounding the Assay Building.

The administrative record supporting this action is available for review at the EPA, Region 9 offices located at 75 Hawthorne Street, San Francisco, California.

## **V. CONCLUSIONS OF LAW**

10. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11. Newmont USA Limited and Donner Mine Camp are each a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent Newmont USA Limited is the successor to Empire Star Mines Co., who owned and operated the Site from approximately 1934 to 1942, and was responsible for mining and assaying activities carried out at the mine and the Assay Building until mining activities at the Zeibright Mine ceased in 1942. Donner Mine Camp is the current owner and has operated the Assay Building as a museum for its guests.

Accordingly, these Respondents are "liable" within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), and are subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

13. The toxic materials identified in the Action Memorandum are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and by meeting requirements set forth in 40 C.F.R. § 261.24. Hazardous substances disposed or dumped at or around the Property constitute a "release," as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

14. The actual or threatened release of hazardous substances from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **VI. DETERMINATIONS**

Based on the Findings of Fact and the Conclusions of Law stated herein, the Branch Chief has made the following determinations:

15. That an actual or threatened release of hazardous substances from the Site presents an imminent and substantial endangerment to the public health or welfare or the environment.

16. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors stated in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health or welfare or the environment.

17. That the removal action required by this Order, if properly performed, will be consistent with the NCP and CERCLA, and is appropriate to protect the public health or welfare



or the environment.

## **VII. NOTICE TO THE STATE**

18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the State of the issuance of this Order by providing a copy of this Order.

## **VIII. EFFECTIVE DATE**

19. This Order is deemed effective on receipt (the "Effective Date"), unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second day following the day of such conference unless modified in writing by EPA.

## **IX. ORDER**

20. Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders Respondents to perform the specific work set forth below under the direction of the EPA On Scene Coordinator ("OSC"), as designated in Section XIV, and to comply with all requirements of this Order until EPA provides notice that the Response Action is complete.

### **A. Work to be Performed**

21. Respondents shall immediately restrict access to the area around the Assay Building for the duration of the response action required by this Order, Respondents shall not allow any soil or waste material to be removed from or brought into the Property at the Site without prior EPA approval.

22. Within three (3) days after the Effective Date of this Order, Respondents shall submit to EPA for approval, a Work Plan for the removal of hazardous substances from the Site. The Work Plan shall provide a concise description of the activities to be conducted to comply

with the requirements of this Order, and shall include a proposed schedule for implementing and completing such activities. The Work Plan, which shall be subject to EPA approval, shall comply with the requirements provided in Paragraphs 24-27 below, and at a minimum, shall require the Respondents to perform and complete the following removal activities beginning on June 26, 2006.

- A) Excavate surface soils around the Assay Building containing lead in excess of 400 ppm to a depth of one foot and dispose of the excavated soils at an EPA approved off-site disposal facility;
- B) Decontaminate the Assay Building of lead and arsenic waste, debris and dust inside the Assay Building by micro vacuuming, followed by wet wipe of all accessible surfaces;
- C) Properly containerize, transport and dispose in accordance with all applicable or appropriate regulations, all hazardous substances at the Site or, where feasible, implement alternative treatment or reuse/recycling options. Each transfer of hazardous substances, pollutants or contaminants off-Site must be consistent with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA procedures for planning and implementing off-Site Response Actions established at 40 C.F.R. § 300.440;
- D) Perform sampling in accordance with Occupational Safety and Health Administration ("OSHA") regulations during appropriate phases of the removal action, especially when there is a potential for airborne releases of toxic air contaminants. Use operational controls such as dust containment or suppression to abate fugitive dust emissions. The project Health and Safety Plan meeting

OSHA's criteria at 29 C.F.R. § 1910.120 must be maintained at the Site during all phases of the response;

- E) Provide EPA with copies of all documentation related to off-Site disposal or other disposition of wastes including, but not limited to, manifests, waste profiles and analytical data and disposal costs.
- F) Respondent Donner Mine Camp, Inc. shall keep the Assay Building locked at all times and shall no longer allow public access to the building at any time. In addition, Respondent Donner Mine Camp, Inc. shall place weatherproof signs on all exterior walls of the Assay Building forbidding access to the building. In the event that Respondent Donner Mine Camp, Inc. relinquishes control over the Site through sale, lease, assignment or other forms of transfer, Respondent Donner Mine Camp, Inc. shall notify EPA of the transfer no less than thirty (30) days prior to the effective date of the transfer.

23. Within three (3) days of the Effective Date of this Order, the Respondents shall provide EPA with documentation that adequately demonstrates their financial ability to complete the work to be performed pursuant to this Order. Examples of adequate financial documentation that EPA may accept include, but are not limited to, a signed contract or guarantee on the part of the Respondents' contractor that it will complete the work to be performed (including payment terms, such as whether the contract is prepaid), an irrevocable letter of credit payable to EPA from a financial institution, a policy of insurance covering site Response Actions and contingent claims that provides EPA with acceptable rights as a beneficiary thereof, an escrow account for the value of the work to be performed; or a demonstration by the Respondents that they have adequate net worth and /or cash flow to pay for the work to be performed (which may include

financial statements, auditors' reports, and the like).

24. The Work Plan required in Paragraph 22 shall be reviewed by EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondents shall prepare the Work Plan elements described below as separate documents for approval by EPA. Once approved, each element of the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Respondents shall implement the Work Plan as finally approved by the EPA. In addition to the requirements listed in Paragraph 22, the Work Plan shall include:

- A) A Health & Safety Plan, prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992, which complies with all current OSHA regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents shall incorporate all changes to the Health & Safety Plan recommended by EPA and implement the Health & Safety Plan throughout the performance of the removal action; and
- B) A Quality Assurance Project Plan ("QAPP") that is consistent with EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5); Preparation of a U.S. EPA Region 9 Field Sample Plan for EPA-Lead Superfund Projects (Document Control No.: 9QA-05-93); and Guidance for the Data Quality Objectives Process (EPA QA/G-4). Soil sampling activities shall utilize proper soil assessment techniques as defined in EPA Document SW-846, Chapter 9 (EPA Environmental Response Team Standard Operating Procedures) or appropriate ASTM standards.

25. Respondents shall provide EPA with a written report on completion of the transportation of hazardous substances or wastes for disposal or recycling. This report should

contain a summary of the activities to comply with this Order. Within twenty-one (21) days after completing the Response Action, Respondents shall provide EPA with this final summary report, which also shall include all invoices submitted by contractors (which shall identify specific work performed), and copies of all analytical data generated during the response action.

26. All documents, including technical reports, and other correspondence to be submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA.

Harry Allen, Federal On-Scene Coordinator  
US Environmental Protection Agency  
EPA, Region 9, SFD-9-2  
75 Hawthorne Street  
San Francisco, CA 94105

Respondents shall submit two (2) copies of each document to EPA.

27. EPA will review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondents. All EPA comments on draft deliverables shall be incorporated by the Respondents. EPA will notify the Respondents in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA will specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA first shall notify the Respondents of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, may seek penalties from the Respondents for failing to comply with this Order, and may conduct the remaining work required by this Order and seek to recover costs from Respondents.

28. For purposes of this Order, EPA's authorized representatives will include, but not be limited to, consultants and contractors hired by EPA to oversee the activities required by this Order.

B. Selection of Contractor(s) and Subcontractor(s)

29. All work performed by or on behalf of Respondents pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by EPA. Respondents shall, within three (3) days after the Effective Date of this Order, notify EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondents shall be subject to EPA review and approval.

30. If EPA disapproves of any person's or contractor's technical or work-experience qualifications, EPA will notify the Respondents in writing. Respondents shall, within three (3) working days of Respondents' receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondents shall be deemed to have failed to comply with the Order.

31. Respondents may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondents wish to propose such a change, Respondents shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraphs 29 and 30, above. The naming of any replacement(s) by

Respondents shall not extend any deadlines required by this Order nor relieve the Respondents of any of their obligations to perform the work required by this Order.

32. Respondents will notify EPA of the respective field activities at least seventy-two (72) hours before initiating them so that EPA may adequately schedule oversight tasks.

33. Respondents shall submit to EPA a certification that Respondents or their contractor(s) and subcontractor(s) have adequate insurance coverage or other ability, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondents shall ensure that the United States is named as an additional insured on any such insurance policies.

C. General Provisions:

34. All work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; any Work Plan or individual components approved pursuant to Paragraph 24 of this Order; and any report,

document or deliverable prepared by EPA because Respondents failed to comply with this Order.

35. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by the Respondents pursuant to this Order shall, after approval by EPA, be incorporated into and enforceable under this Order.

36. EPA will oversee Respondents' activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). Respondents will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondents also shall cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the Site, including work performed by EPA, the State, or any other party performing work at the Site with the approval of EPA.

37. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

#### **X. NOTICE OF INTENT TO COMPLY**

38. Respondents shall, within three (3) working days of the Effective Date of this Order, provide written notice to EPA of Respondents' irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order. Such written notice shall be sent to:



Larry Bradfish  
Office of Regional Counsel  
United States Environmental Protection Agency  
75 Hawthorne Street, Mailcode ORC-3  
San Francisco, CA 94105  
Telephone: 415-972-3934  
Fax: 415-947-3571

**XI. OPPORTUNITY TO CONFER**

39. Respondents may, within two (2) days of receipt of this Order, request a conference with the Section Chief of the Emergency Response Section in the Response, Planning and Assessment Branch in the EPA Region 9 Superfund Division, or whomever the Section Chief may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

40. At any conference held pursuant to Respondents' request, the Respondents may appear in person, or be represented by an attorney or other representative. If Respondents desire such a conference, Respondents shall contact Larry Bradfish, Assistant Regional Counsel, at (415) 972-3934.

41. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondents intend to comply with this Order. If such a conference is held, the Respondents may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondents are ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing,

and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to the following address:

Larry Bradfish  
Office of Regional Counsel  
Environmental Protection Agency  
75 Hawthorne Street, ORC-3  
San Francisco, CA 94105

42. Respondents are hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondents may be liable for the costs of those actions under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

## **XII. ENDANGERMENT AND EMERGENCY RESPONSE**

43. In the event of any action or occurrence during the performance of the work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's primary OSC, or, if the primary OSC is unavailable, EPA's alternate OSC, as designated below in Paragraph 49. If neither of these persons is available, Respondents shall notify the EPA Emergency Response Unit, Region 9, by calling (800) 300-2193. Respondents shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the approved Health & Safety Plan.

44. Nothing in the preceding Paragraph shall be deemed to limit any authority of the

United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

### **XIII. MODIFICATION OF WORK REQUIRED**

45. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than within three (3) days of discovery of the unanticipated or changed circumstances.

46. The Branch Chief may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraphs 43 and 45. Where consistent with Section 106(a) of CERCLA, the Branch Chief may direct, as an amendment to this Order, that Respondents perform these tasks in addition to those required herein. Respondents shall implement the additional tasks that the Branch Chief identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Branch Chief in any modifications to this Order.

### **XIV. DESIGNATED PROJECT MANAGERS**

47. EPA designates Harry Allen, an employee of EPA Region 9, as its primary OSC and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake the Response Action (or portions of the Response Action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within three (3)

days of the Effective Date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for overseeing Respondents' implementation of this Order. To the maximum extent possible, all oral communications between Respondents and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's OSC and Respondents' Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 26, above.

48. EPA and Respondents may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

49. Consistent with the provisions of this Order, the EPA designates Peter Guria as an alternate OSC, in the event Harry Allen is not present at the Site or is otherwise unavailable. During such times, Peter Guria shall have the authority vested in the OSC by the NCP, as set forth in Paragraph 47 above.

50. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal law.

## **XV. SITE ACCESS**

51. Respondents shall permit EPA and its authorized representatives, including its contractors and the State, to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit on EPA's authority under federal law to gain access

to the Site.

52. To the extent that Respondents require access to property other than Property that they own to carry out the terms of this Order, Respondents shall, within a reasonable time to implement the requirements of this Order, obtain access for: EPA, its contractors, oversight officials, or other authorized representatives; state oversight officials or contractors; and Respondents and their authorized representatives. If Respondents fail to gain access within the time period necessary to implement the requirements of this Order, Respondents shall continue to use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best efforts" include, but are not limited to, the payment of money as consideration for access. If access is not provided within the time referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA and recover any costs incurred pursuant to Section XVI of this Order.

#### **XVI. REIMBURSEMENT OF OVERSIGHT COSTS**

53. Respondents shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order, unless otherwise exempted from this requirement by federal law. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Region 9 Superfund  
P.O. Box 371099M  
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the Zeibright Mine Site by name and make reference to this Order, including the EPA docket number stated above. Respondents shall send notification of any amount paid, including a photocopy of the check, simultaneously to the EPA OSC.

54. Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the due date of the original demand notwithstanding any dispute or objection to any portion of the costs.

#### **XVII. DELAY IN PERFORMANCE**

55. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondents under the terms and conditions of this Order.

56. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this

Order are not justifications for any delay in performance.

57. If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondents' obligations under this Order.

58. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondents pursuant to Paragraph 57 above, and specify in writing to the Respondents the new schedule for completion of the activity or submission of the document for which the extension was requested.

#### **XVIII. RECORD PRESERVATION**

59. Respondents shall maintain, during the pendency of this Order, and for a minimum of five (5) years after EPA provides notice to Respondents that the work has been completed, a depository of the records and documents required to be prepared under this Order. In addition, Respondents shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in their possession or in the possession of their employees, agents, contractors, or attorneys. After this five-year period, Respondents shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondents shall provide these documents to EPA.

#### **XIX. ENFORCEMENT AND RESERVATIONS**

60. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondents. This

reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, and the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

61. Notwithstanding any other provision of this Order, at any time during the Response Action, EPA may perform its own studies, complete the Response Action (or any portion of the Response Action) and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

62. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9607(a), et seq., or any other applicable law. Respondents may be liable under CERCLA Section 107(a) for the costs of any such additional actions.

63. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

64. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondents are not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.

65. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

66. EPA expressly reserves all rights and defenses that it may have, including the



EPA's right both to disapprove of work performed by Respondents and to request the Respondents to perform tasks in addition to those detailed in Section IX of this Order.

67. This Order does not release Respondents from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States or the State.

68. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Order.

## **XX. SEVERABILITY**

69. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

## **XXI. DISCLAIMER**

70. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

## **XXII. PENALTIES FOR NONCOMPLIANCE**

71. Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that violation of this Order or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondents to a civil penalty of up to \$32,500 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, also may subject Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

## **XXIII. TERMINATION AND SATISFACTION**

72. The provisions of this Order shall be deemed satisfied on Respondents' receipt of written notice from EPA that Respondents have demonstrated to the satisfaction of EPA that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been completed.

Unilateral Administrative Order 9-2006-23

IT IS SO ORDERED:

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

By: 

Daniel A. Meer  
Branch Chief, Response, Planning and Assessment Branch  
EPA, Region 9

Date: 6/19/06

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## **APPENDIX A**